

## Extreme Risk Protection Orders

### 319.1 COMPLETING AND FILING A PETITION

Agency Content

#### JURISDICTION

Unless the Supreme Court orders otherwise, the Syracuse Police Department shall serve as the primary agency serving Extreme Risk Protection Orders (ERPO) where the respondent lives in the City of Syracuse, or when the petition is made in response to any case where the Syracuse Police Department is the investigating agency. If members of the Syracuse Police Department are directed to serve an ERPO outside of the City, attempts shall be made to notify, and if necessary, coordinate with the agency having primary jurisdiction at the specified location.

#### COMPLETING AND FILING A PETITION

An officer who reasonably believes that an Extreme Risk Protection Order is appropriate shall obtain supervisor approval prior to seeking an order. If the supervisor concurs, the case officer should contact the on-call Assistant District Attorney for assistance with filing a petition for an ERPO. The Onondaga County District Attorney's Office will serve as the petitioner in Syracuse Police Department ERPO cases and will complete the required ERPO paperwork.

Before the Assistant District Attorney can complete an Application for a Temporary Extreme Risk Protection Order, the case officer(s) shall meet with him or her and provide them with all relevant police reports, affidavits, orders of protections, file 15s, recordings, text messages, documents, etc., that support probable cause to believe that the respondent is likely to engage in conduct that would result in serious harm to him or herself, or others, as defined in MHY § 9.39 (a) (1) or (2).

If an officer has reason to believe that the respondent possesses firearms, rifles, and/or shotguns, that information shall be indicated in police reports and affidavits (if applicable), along with the basis for that knowledge, and the specific locations that the firearms, rifles, and/or shotguns can be located, if known. Knowledge or belief that the respondent possesses a gun is not required to file a petition.

The Assistant District Attorney will file the Application and other relevant paperwork with the Supreme Court Clerk's Office, and notify the appropriate case officer(s) of the scheduled hearing time. The law requires that the case must be heard and decided on the same day that the petition is filed, and the appropriate case officer(s) shall be available to testify in Supreme Court on the day the petition is filed.

The Supreme Court Judge will consider the following factors in determining whether or not to issue a Temporary ERPO:

- (a) Threats or acts of violence or use of physical force directed toward self, the petitioner, or another person;
- (b) A violation of, or alleged violation of an order of protection, or history thereof;
- (c) Any pending charge or conviction for an offense involving the use of a weapon;

# Syracuse Police Department

## Supplemental Manual

### *Extreme Risk Protection Orders*

---

- (d) The reckless use, display or brandishing of a firearm, rifle or shotgun;
- (e) Any history of a violation of an Extreme Risk Protection Order;
- (f) Evidence of recent or ongoing abuse of controlled substances or alcohol; or
- (g) Evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor.

Case officers shall document any evidence of these factors in relevant police reports and affidavits, and shall attach supporting documents (e.g. – a File 15, orders of protection, etc.), where appropriate.

If the Judge grants a temporary ERPO, he or she will order the Syracuse Police Department to serve it on the respondent, and may also order a search of the respondent's person, residence, vehicle, etc. (See 344.P1.3, SERVICE OF ORDERS, below).

The Judge will also order the case officer to conduct a background check of the respondent, document results, and return it to the Court. The background check must document the following, as it relates to the respondent:

- (a) Any prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence;
- (b) Any criminal charge or violation currently pending against him or her;
- (c) Whether or not he or she is currently on probation or parole;
- (d) Possession of any registered firearms, rifles or shotguns; and
- (e) Whether he or she is, or has been, subject to any order of protection or has violated or allegedly violated any order of protection.

To the extent possible, this information should be included in police reports at the time of the initial investigation and provided to the Assistant District Attorney prior to the Application for the Temporary ERPO being filed. Alternatively, the case officer shall complete the background investigation and supplemental report following the hearing, and as directed by the Judge.

The Judge will schedule a Final ERPO hearing within 3-6 days from the date of the temporary hearing to determine if a Final ERPO will be issued. The appropriate case officer(s) will be required to testify in the final hearing, also.

If the Judge does not grant a temporary ERPO, he or she will order the case officer(s) to serve the petition on the respondent, and will schedule a Final ERPO hearing for 10 days from the date of service to allow the District Attorney's Office to gather more evidence or present additional witnesses. The appropriate case officer(s) will be required to testify in that final hearing, also.

A Final ERPO is valid for a maximum of 1 year from the date that the Temporary ERPO was issued, or if a Temporary ERPO was not granted, then the date of the hearing. The District Attorney's Office may re-apply to have the order extended at that time (CPLR § 6341; CPLR § 6345).

# Syracuse Police Department

## Supplemental Manual

### *Extreme Risk Protection Orders*

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#### **319.2 SERVICE OF ORDERS**

##### **Agency Content**

If a petition is granted, the Court will direct that the respondent be served the order, the application, and any supporting documents. The order will also include a "Notice of Hearing," to determine if a final (non-temporary) ERPO will be issued. That hearing will be ordered within 3-6 days of the Temporary ERPO hearing.

- (a) Prior to serving an order, the assigned officer shall read and evaluate the order, and if applicable, the attached Search Order (Search Warrant), the application, and supporting documents, verify the respondent and address, and notify a supervisor of the order.
- (b) The assigned supervisor shall confer with the Commanding Officer, or in his/her absence, the Executive Officer of the Special Weapons and Tactics (SWAT) Team, and conduct a risk assessment on all orders involving the surrender of weapons, so as to determine the safest and most appropriate method of service. At no time shall any ERPO be served with less than two officers, regardless of the risk assessment. See the Operations and Deconfliction Policy for guidance regarding the service of high-risk warrants.
- (c) The first attempt at service shall occur as soon as is practicable and as circumstances dictate, and should not exceed 24 hours.
- (d) Each attempt at service shall be documented in a police report, detailing the date and time service was attempted, and the reason the order could not be served, if applicable.
- (e) Service is not considered valid unless the respondent is personally served, unless the Court specifies otherwise. In cases where the respondent is personally served, an affidavit of service shall be completed.
- (f) At a minimum, the respondent shall be advised of the order, that the Court has ordered that all firearms in his or her possession, or otherwise in his or her custody or control, be turned over to law enforcement pending a hearing in Supreme Court, and a request shall be made that the respondent surrender any such firearms. If the respondent denies possession of any firearms, reasonable investigative steps to confirm or refute that claim shall be made. A request for consent to search the respondent and/or his or her property may be made where appropriate.
- (g) If the respondent voluntarily surrenders his or her firearms, all firearms in the respondent's possession must be documented on the Respondent Listing of Firearms, Rifles and Shotguns form issued by the Court (CPLR § 6342 (4)(e)).
- (h) Some ERPOs may contain a Search Order pursuant to CPLR Article 63-A and Criminal Procedure Law § 690. In those cases, a consent to search is not necessary, and a search for prohibited items as specified in the order should be conducted in accordance with the Warrant Service Policy, Operations and Deconfliction Policy, and applicable law.
- (i) Any firearms recovered pursuant to the Search Order provision on an ERPO must be documented on a Search Warrant Return/Inventory form pursuant to CPL § 690.50.

# Syracuse Police Department

## Supplemental Manual

### *Extreme Risk Protection Orders*

---

The Search Warrant Return/Inventory must be returned with all applicable paperwork to the issuing Supreme Court judge without unnecessary delay.

- (j) Regardless of the means of recovery, the respondent shall be provided with a copy of a detailed Property Receipt (Form 5.4), in accordance with departmental policy and procedure. The original Property Receipt should be retained by the case officer and submitted to the Records Division under the appropriate DR#.
- (k) Prior to proceeding with the following steps, officers are required to contact a supervisor. The supervisor will ensure that all attempts to serve the warrant have been exhausted prior to completing the following steps. If a respondent is served in court or via mail/publication, he or she may surrender firearms to law enforcement within 48 hours of receiving notice, rather than immediate surrender. In those cases, the following procedure shall apply:
  - 1. A respondent may call the Syracuse Police Department to schedule an appointment to surrender firearms. In the interest of public safety, appointments shall be scheduled at the earliest opportunity.
  - 2. Respondents should be advised to respond to the Public Safety Building at the appointed time with their unloaded firearms in a vehicle, and transported in accordance with state law.
  - 3. Respondents shall be advised to leave their firearms and ammunition inside the vehicle and to contact police personnel upon arrival at the Public Safety Building. No firearms should be brought into the Public Safety Building by the respondent.
  - 4. The assigned officer shall take possession of the surrendered firearms and ammunition in a safe manner as arranged by the assigned officer. An NCIC check shall be conducted to ensure that none of the firearms are listed as stolen and that all identified firearms have been surrendered.
  - 5. The respondent shall be provided with a detailed Property Receipt (Form 5.4), in accordance with departmental policy and procedure.
  - 6. The case officer shall complete a supplemental report under the original DR#, documenting the surrender of firearms, the NCIC check, and the issuance of a Property Receipt.
  - 7. Firearms that are collected under these circumstances and that have not been released by the Court shall be held for a minimum of two years, despite the nuisance rules associated with New York State Property Law.
- (l) Firearms shall be turned into the Property Division as evidence or safekeeping as appropriate, per departmental policy and procedure.
- (m) Court orders that have expired or are unsigned will not be served.
- (n) The case officer shall ensure that all documentation associated with the ERPO (e.g. – the Order itself, the Respondent Listing of Firearms, Rifles and Shotguns, the Notification of Hearing for Final Extreme Risk Protection Order, the Order for Background Investigation, and the Affidavit of Service) are submitted to the Records Division and scanned into Chairs2 under the appropriate DR#, where applicable.

# Syracuse Police Department

## Supplemental Manual

### *Extreme Risk Protection Orders*

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#### **319.3 RELEASE OF FIREARMS SEIZED OR SURRENDERED PURSUANT TO ERPOS**

##### **Agency Content**

Prior to releasing firearms seized or surrendered pursuant to an ERPO, Property Room personnel shall ensure confirmation of the following:

- (a) That the individual to whom the firearms are to be returned is the individual from whom the firearms were obtained, or an authorized representative of that individual, or the legal owner of the firearms, or another person identified by a Court Order.
- (b) Proof of a Court Order authorizing the release of the firearms.
- (c) The ERPO has expired by its terms, or was dismissed by the Court and is no longer in effect.
- (d) The ERPO was a temporary order that has expired, and the Court denied a motion for a Final (permanent) Order.
- (e) The Order has been modified by the Court and the respondent is no longer prohibited from possessing firearms.
- (f) The firearms are not required to be held for evidence or any other reason.
- (g) If the owner is eligible to possess firearms but the agency has knowledge the owner lives with a person who is ineligible to possess firearms (e.g. – because they are a felon, have disqualifying domestic violence convictions, are the subject of “no contact” or other orders of protection, etc.), the firearms may not be released without a court order. Felons and others disqualified from possession are prohibited from actual or constructive possession.
- (h) If a person other than the respondent claims title to any firearms surrendered, and it is determined by the Syracuse Police Department that they are, in fact, the lawful owner of the firearm, the owner should be advised that he or she may request of the Court that the firearm should be returned to him or her.